INDEX

PAGE

ARGUMENT:

I. The Court should resist the Government's attempt to apply civil regulatory standards to criminal law enforcement legislation 2

II. The foreign reporting requirements of the Act violate the Fourth and Fifth Amendments 6

A. The Fourth Amendment 6

B. The Fifth Amendment 10

III. The recordkeeping requirements of the Act offend the Fourth and Fifth Amendments 13

IV. The appellant ACLU faces specific present and future injury from the coerced maintenance of its membership list by its bank—injury intolerable under the First Amendment 18

CONCLUSION 20

TABLE OF AUTHORITIES CITED

Cases:

Albertson v. *SACB*, 382 U.S. 70 (1965) 10, 11

Bartlett Frazier Co. v. *Hyde*, 65 F.2d 350 (7th Cir. 1933) 7

Berger v. *New York*, 388 U.S. 41 (1967) 9

Boyd v. *United States*, 116 U.S. 616 (1886) 4, 8

PAGE

Camara v. *Municipal Court*, 387 U.S. 523 (1967) 5
Carroll v. *United States*, 267 U.S. 132 (1925) 8
Communist Party v. *SACB*, 367 U.S. 1 (1961) 10
Couch v. *United States*, —— U.S. ——, 34 L. Ed.2d 548 (1973) 15, 16

Donaldson v. *United States*, 400 U.S. 517 (1971) 15, 16

Flint v. *Stone Tracy Co.*, 220 U.S. 107 (1911) 7-8
Frank v. *Maryland*, 359 U.S. 360 (1959) 5

Gravel v. *United States*, 408 U.S. 606 (1972) 16
Grosso v. *United States*, 390 U.S. 62 (1968) 12

Isbrandsen-Moller Co. v. *United States*, 300 U.S. 139 (1937) 7

Katz v. *United States*, 389 U.S. 347 (1967) 9

Laird v. *Tatum*, 408 U.S. 1 (1972) 19
Lankford v. *Gelston*, 364 F.2d 197 (4th Cir. 1966) 14

One 1958 Plymouth Sedan v. *Pennsylvania*, 380 U.S. 693 (1965) 4

Perry v. *Sindermann*, 408 U.S. 593 (1972) 7, 14

Reitman v. *Mulkey*, 387 U.S. 369 (1967) 2
Rodgers v. *United States*, 138 F.2d 992 (6th Cir. 1943) 7

Shapiro v. *United States*, 335 U.S. 1 (1948) 12

PAGE

United States v. *Sullivan*, 274 U.S. 259 (1927) 11
United States v. *United States Coin & Currency*, 401 U.S. 715 (1970) 4
United States v. *United States District Court*, 407 U.S. 297 (1972) 9
United States v. *White*, 401 U.S. 745 (1971) 13
United States Servicemen's Fund v. *Eastland*, No. 71-2034, D.C. Cir., Aug. 30, 1973 ..... 16, 18

Yick Wo v. *Hopkins*, 118 U.S. 356 (1886) 2

Statute:

26 U.S.C. Section 6001 11

Congressional Record:

Hearings before the Subcommittee on Financial Institutions of the Senate Committee on Banking and Currency on Foreign Bank Secrecy (S. 3678), 91st Cong., 2d Sess. 15

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1196

FORTNEY H. STARK, JR., *et al.*,

Appellants,

—v.—

GEORGE P. SHULTZ, *et al.*,

Appellees.

No. 72-1073

GEORGE P. SHULTZ, *et al.*,

Appellants,

—v.—

CALIFORNIA BANKERS ASSOCIATION,
FORTNEY H. STARK, JR., *et al.*,

Appellees.

No. 72-985

CALIFORNIA BANKERS ASSOCIATION,

Appellant,

—v.—

GEORGE P. SHULTZ, *et al.*,

Appellees.

ON CONSOLIDATED APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

REPLY BRIEF OF APPELLANTS FORTNEY H. STARK, JR., *ET AL.*

(Appellants in No. 72-1196)

I.

The Court should resist the Government's attempt to apply civil regulatory standards to criminal law enforcement legislation.

The differences between the private litigants and the Government are nowhere more apparent than in their respective treatments of the purpose of the Act, and the conclusions drawn from that purpose.

The axiom that a statute is to be construed in light of its purpose needs no citation. This Court has been divining and acting upon the real purpose of legislative acts—stated or not—since long before San Francisco outlawed wooden laundries. *Yick Wo* v. *Hopkins*, 118 U.S. 356 (1886). See also *Reitman* v. *Mulkey*, 387 U.S. 369, 373 (1967).

The central purpose of the Bank Secrecy Act is *criminal* law enforcement—a fact so clear that the Government does not directly deny it. Indeed, in its opening brief in its own appeal, the Government twice called criminal law enforcement "the purpose" of the Act (Gov't OB 9, 18).[1] But the Act cannot be defended when measured against the limitations appropriate to criminal law enforcement, so the Government in its brief in this appeal repeatedly seeks to disguise the Act in civil clothing, urging upon the Court constitutional standards appropriate to economic regulation.

In this effort the Government has even begun to confuse the subject matter of the Act. It suggests that the Act

[1] References to "Gov't AeB" herein are to the Government's Appellees' Brief in Nos. 72-985 and 72-1196; reference to "Gov't OB" are to the Government's Appellants' Brief in No. 72-1073.

helps "to eliminate the use of banking for unlawful activities" (Gov't AeB 10-11); it ventures that the Act provides "a deterrent to burdening the channels of foreign commerce with illegal conduct" (*id.* at 14); it calls a "collateral purpose" of the Act the use of information for "regulatory, tax and criminal" law enforcement (*ibid.*), thus inverting not only the purpose of the Act but even the order in which that purpose is stated.

The Government reaches the apogee of error when it asserts that the basic "activity" being "regulated" by the Act is not crime at all, but commercial banking (*id.* at 25):

> The "basic activity" regulated here—commercial banking transactions—is one which is affected with a public interest and subject to substantial regulation under numerous constitutional powers, including the Commerce Clause. Congress plainly has the authority to provide for the retention of records of these transactions to insure that the channels of interstate commerce are employed in a manner which will facilitate rather than jeopardize or hinder that enforcement of tax and criminal laws . . .

Thus, rather than directly taking issue with the fact that the Bank Secrecy Act is a statute intended to enforce criminal laws, the Government now confuses ends and means in order to support the application of civil standards to criminal law enforcement. Throughout its brief in this appeal, the Government suggests that the appropriate standards for judging the Act are whether Congress has chosen "appropriate means to achieve [a] legitimate end" (*id.* at 26), "whether the means are reasonably appropriate to the accomplishment of a legitimate legislative purpose"

(*id.* at 24-25), and whether the requirements of the Act are "reasonable" (*id.* at 68). These offered standards are everywhere accompanied by citations to and reliance upon decisions dealing only with civil regulation of economic activity. The Government's only serious attempt to distinguish *Boyd* v. *United States,* 116 U.S. 616 (1886), is to say that *Boyd* has no bearing on reports "required by an otherwise valid regulatory scheme . . . " (Gov't AeB 68, n. 41).

It makes no sense, we submit, to speak of an "activity" being "regulated" when the activity is crime, the regulation is prohibition, and the means chosen are those calculated to collect evidence of crime. It makes no more sense to speak of a legislative purpose of not "burdening" commerce with criminal activity than it does to speak of not "burdening" the telephone lines with conversations about crime, or not "burdening" the mails with letters about crime.

It is constitutionally disastrous, we think, to measure the collection of evidence of crime by the standards appropriate to the regulation of commerce. With all deference, we are confident that this Court would never permit the Government, in order to ferret out crimes, to force the telephone company to record calls pursuant to its "regulatory" power over the telephone system, or to search apartments in public housing projects for evidence of crime on the theory that the Government may "regulate" public housing. This Court has consistently recognized criminal law enforcement wherever it has appeared in civil clothing. See, e.g., *United States* v. *United States Coin & Currency,* 401 U.S. 715 (1970); *One 1958 Plymouth Sedan* v. *Pennsylvania,* 380 U.S. 693 (1965); *Boyd* v. *United States,* 116 U.S. 616 (1886).

There are undoubtedly some tangential benefits for civil law enforcement in the Bank Secrecy Act. But plainly its central, dominant, almost exclusive purpose—"the purpose", in the Government's own words (Gov't OB 9, 18)—is to enforce the criminal law. It is equally clear that the Bill of Rights and particularly the Fourth and Fifth Amendments, are nowhere more stringently applied—and rightly so—than to enforcement of the criminal law. As Mr. Justice Frankfurter eloquently put it in *Frank* v. *Maryland*, 359 U.S. 360 (1959) (*overruled, Camara* v. *Municipal Court*, 387 U.S. 523 (1967)):

> Against this background two protections emerge from the broad constitutional proscription of official invasion. The first of these is the right to be secure from intrusion into personal privacy, the right to shut the door on officials of the state unless their entry is under proper authority of law. The second, and intimately related protection, is self-protection: the right to resist unauthorized entry which has as its design the securing of information to fortify the coercive power of the state against the individual, information which may be used to effect a further deprivation of life or liberty or property. Thus, *evidence of criminal action* may not, save in very limited and closely confined situations, be seized without a judicially issued search warrant.
>
> . . . Certainly it is not necessary to accept any particular theory of the interrelationship of the Fourth and Fifth Amendments to realize what history makes plain, that it was on the issue of the right to be secure from searches for *evidence to be used in criminal*

prosecutions or for forfeitures that the great battle for fundamental liberty was fought.

359 U.S. at 365 (emphasis added; footnote omitted).

We therefore urge this Court to continue its historic resistance to executive attempts to clothe criminal law enforcement in civil robes and to justify it under regulatory standards—an invitation that permeates the Government's brief.

II.

The foreign reporting requirements of the Act violate the Fourth and Fifth Amendments.

A. *The Fourth Amendment*

The Government does not argue, for obvious reasons, that the Fourth Amendment claims of the appellants who must affirmatively report their foreign financial interests and transactions are premature. Nor does the Government seriously dispute that a seizure has occurred when such a report is coerced. Instead it brushes aside the entire problem by saying that since "important governmental powers and purposes" (Gov't AeB 67) were involved in the passage of this portion of the Act, the requirements are "reasonably designed to serve the legislative purpose" and therefore "present no Fourth Amendment problem."

To some extent this argument is a reference to the Government's exposition (*id.* at 50-56) of the history and purpose of the foreign reporting requirements. Apparently because "thousands" of foreign financial interests (*id.* at 52) involve illegality, it is somehow reasonable to demand the

details of them *all*, indiscriminately, even though the Government concedes that most such interests are wholly legitimate and innocent of wrongdoing (*id.* at 52, 66).

The Government also implies (Gov't AeB 62-63) that since Congress' power to regulate foreign commerce extends to prohibiting it, Congress may therefore condition the privilege of dealing in foreign commerce upon the disclosure of whatever information it wants. But this Court has thoroughly put to rest the obsolete notion that "privileges" can be conditioned upon a waiver of constitutional rights. See, e.g., *Perry* v. *Sindermann*, 408 U.S. 593, 597 (1972).

The Government argues that appellants' claim that "the Fourth Amendment prohibits any requiring of reports that is not subject to prior judicial supervision is refuted by all the authorities" (Gov't AeB 68). That overstates appellants' claim; the Fourth Amendment has long been understood not to require prior judicial supervision of required reports where those reports are needed to enforce a specific statutory scheme regulating the commercial activities of businesses, as in *Isbrandsen-Moller Co.* v. *United States*, 300 U.S. 139, 145 (1937); *Rodgers* v. *United States*, 138 F.2d 992, 996 (6th Cir. 1943); *Bartlett Frazier Co.* v. *Hyde*, 65 F.2d 350, 351-52 (7th Cir. 1933).[2] And it was decided long ago that the Fourth Amendment was not intended by the Framers to prevent the requiring of tax returns, a practice in effect when that Amendment was drafted. *Flint* v.

[2] As the Court observed in *Rodgers, supra*, "Unless the distinction between private records and papers and quasi-public records and papers is kept in mind in applying the Fourth Amendment, it will be difficult to regulate business subject to congressional intervention under the Constitution." 138 F.2d at 996.

Stone Tracy Co., 220 U.S. 107, 175 (1911). This common understanding is both the source of and the explanation for the Court's dictum in *Boyd, supra,* that:

> So also the supervision authorized to be exercised by officers of the revenue over the manufacture or custody of excisable articles, and the entries thereof in books required by law to be kept for their inspection, are necessarily excepted out of the category of unreasonable searches and seizures. 116 U.S. at 624.

The Government's suggestion that the reporting of the transportation of a monetary instrument across the border is "substantially similar to customs declarations" and its reliance upon the "settled law and practice that persons entering and leaving the country may be required to identify the items which they are importing or exporting" (Gov't AeB 62-63) have no application here, entirely aside from the fact that those practices are not in aid of criminal law enforcement but seek to limit imports to "effects which may be lawfully brought in," *Carroll* v. *United States,* 267 U.S. 132, 154 (1925). The report required of transporters of monetary instruments, which is reproduced as Appendix C to the Government's Motion to Affirm, requires far more and different information than any customs declaration ever has or could, including social security numbers, the fact of agency and the name, address and occupation of any principal, and for recipients, the identity of the person from whom the instrument was obtained. Nor must the reporting party cross the border himself in order to be liable to report—he could, in fact, use first class mail. Finally, the customs power is designed to screen out items the importing or exporting of which is *illegal* or *taxable*—and no one

argues here that it is illegal to send or receive monetary instruments across the border.

The Government next argues that no person who transports monetary instruments across the border has any reasonable expectation of privacy in his transactions because "similar" reports are frequently required for tax purposes (Gov't AeB 68, n. 42, and Motion to Affirm, Appendix A). It is not suggested that the validity of these requirements has been litigated, and it is not argued that they serve the purpose of gathering evidence of crime. The tax reporting requirements, which all seek information about the reporter's income or his business relationships with others (as distinct from the activities of third parties with persons unknown), serve a legitimate Congressional purpose which is 1) specific, 2) wholly regulatory and noncriminal, and 3) tiny in scope compared to the foreign reporting requirements at issue here.

Finally, the Government concludes (Gov't AeB 68-69) with an argument which illustrates both the poverty of its position and the immense danger of its reasoning: it argues that there is no reasonable expectation of privacy in reportable transactions because:

> . . . when one engages in activities subject to the plenary power of Congress, there can be no reasonable expectation of privacy with respect to the details of said transactions.

This astonishing assertion means, if it is correct, that *Berger* v. *New York,* 388 U.S. 41 (1967), *Katz* v. *United States,* 389 U.S. 347 (1967), and *United States* v. *United States District Court,* 407 U.S. 297 (1972), were all wrongly

decided, because the telephone system is very surely "subject to the plenary power of Congress." It means that there is no reasonable expectation of privacy in telegrams, first class mail, public toilets, anywhere on public property, in buses and airplanes, and in dozens of other situations because all of those activities are "subject to the plenary power of Congress." It means, in short, that wherever the plenary power of Congress begins, privacy ends. The argument is arrogant, frightening, and utterly without support in reason or precedent.

B. *The Fifth Amendment*

The Government argues that appellants' claim of violation of the self-incrimination clause of the Fifth Amendment is premature because the claim should await their prosecution for failure to report, and because self-incrimination is not pleaded (Gov't AeB 57-62).

In support of the first argument it is urged that the case is governed by *Communist Party* v. *SACB*, 367 U.S. 1 (1961), rather than by *Albertson* v. *SACB*, 382 U.S. 70 (1965). Yet in *Communist Party* the Court indicated that the claim of privilege was "contingent and conjectural," 367 U.S. at 106, because the officers of the party were under no duty to register unless and until the party refused, and because §14(b) of the Act provided that any order to register was not final until judicial review of the available administrative procedure was completed. Here there is no administrative procedure, and no judicial review; those appellants under the duty to report must do so or "[risk] serious punishments for refusing to do so." 382 U.S. at 76.

It is true that the affected appellants have not pleaded self-incrimination. In the peculiar circumstances of this

case it would be pointless to require them to do so, because this case is the *opposite* of *United States* v. *Sullivan*, 274 U.S. 259 (1927). There the Court perceived that questions asked of everyone for a noncriminal purpose could at least be partially answered in fulfillment of that purpose. See *Albertson, supra,* at 79. Here, the *only* specific purpose to be served is self-incrimination. It is the noncriminal use of the reports which is "contingent and conjectural"; their regulatory usefulness is wholly speculative at this point. The reports are demanded for "the purpose" (Gov't OB 9, 18) of incriminating the reporters. Where no other purpose is served, the reporters should be under no obligation to negate another purpose by pleading.

The Government's claim that the argument is premature because the appellants are most likely to be innocent of wrongdoing (Gov't AeB 61-62) is only a function of the massive overbreadth of the Act—it is in essence an argument that a scheme for the gathering of self-incriminating evidence cannot be attacked as self-incriminating because it is largely a failure; most of the hopefully incriminating evidence will turn out to be useless and irrelevant. This is undoubtedly so, and is for Fourth Amendment purposes an open admission of excessive scope. But for Fifth Amendment purposes it is only a plea of inefficiency—and evidence either incriminating or useless ought not to be compelled on the plea that it is probably useless.[3]

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[3] With respect to the reporting of interests in foreign financial accounts, the Government claims that reports can be compelled in order to enforce the tax law (Gov't AeB 63-64). Putting aside the fact that all of the legislative history to which the Government refers dealt with tax schemes that were clearly criminal—at the pleader's option of the Internal Revenue Service—then by the Government's own logic those reports could be required under 26 U.S.C. §6001, which broadly requires taxpayers to "render such statements" as are found necessary to enforce the tax laws. If the Government is right, the Bank Secrecy Act is superfluous in this respect.

The Government attempts to defeat appellants' self-incriminating argument by relying (Gov't AeB 65-67) on the "required records" doctrine of *Shapiro* v. *United States*, 335 U.S. 1 (1948), as construed in *Grosso* v. *United States*, 390 U.S. 62, 67-68 (1968). The doctrine requires, as indicated in *Grosso*, that the inquiry be "essentially regulatory." The Government does not—and cannot—meet that test, so the Government retreats to the argument that since the reports are mostly useless and "wholly legitimate" (Gov't AeB 66), that somehow is the equivalent of a regulatory scheme. Nor does the Government argue that the records are "customarily kept"—it only asserts that "anyone who engages in such activities must necessarily keep records for various personal and business purposes," and then argues tautologically that such records can be required under *Shapiro* (Gov't AeB 65-66 and n. 40). The suggestion that all of the reports have " 'public aspects' which render them at least analogous to public documents," *Grosso, supra*, at 68, is another consequence of the incredible claim that anyone who deals in an area subject to Congressional regulation has no privacy therein.

The appellants with foreign financial interests are compelled either to report criminality or irrelevancies. Such a requirement should be held to violate the self-incrimination clause notwithstanding the fact that it will usually produce irrelevancies.

III.

The recordkeeping requirements of the Act offend the Fourth and Fifth Amendments.

Pointing out that "the only recordkeepers are the banks" (Gov't AeB 36), and asserting (*id.* at 32) that there will be "time enough" to challenge the recordkeeping requirements if and when records are subpoenaed, the Government urges that appellants' attack on the recordkeeping requirements of the Act is also premature.

The attack is certainly not premature if banks act as agents of the Government when they make or keep records they would not otherwise make or keep—the violation is complete, in that event, upon the act of making or keeping. The Government's main response[4] is to suggest (Gov't AeB 42-43) that, under *United States* v. *White,* 401 U.S. 745 (1971), and other cases involving informants willing to disclose, a customer's disclosures to his bank are "voluntary" disclosures to an agent and therefore not the subject of a search. In essence the argument is that the Government may condition the use of financial institutions

[4] Contrary to the Government's assertion (Gov't AeB 42 n. 23) that this argument reaches every record made by government, the argument reaches only records made under coercion, by private parties (*of course* the Social Security Administration is an agent of government!) for purposes of surveillance of third parties. The occasional tax laws (see the Government's Motion to Affirm, Appendix A) that require private entities to keep records concerning third parties demand information that relates either to the recordkeeper itself or to the civil regulation of the third party in his relationship to the recordkeeper. None demands information seeking the criminal conviction of the third party or fourth parties with whom the third deals. In the tax laws the recordkeeper is an involved party; under the Bank Secrecy Act it is merely an unwilling but strategically located spy.

upon the sacrifice of privacy and call that sacrifice "voluntary." This Court may judicially know that financial institutions are as central to American life as the telephone, to which the Government's theory would also apply, and that to equate their use with disclosure by willing informants is frivolous; it is to rob the term "voluntary" of all meaningful content. If the Government cannot condition a publicly offered benefit upon a waiver of constitutional rights, *Perry* v. *Sindermann, supra, a fortiori* it cannot impose such a condition upon private business essential to modern life.

Even if banks are not agents of government for these purposes, appellants' attack is not premature. When these actions were filed, the original Regulation 103.45 eliminated all possibility of prematurity.[5] The Government's suggestion of prematurity—that there will be "time enough" to litigate when process is served, is based upon three assumptions that range from dubious to false: that process will be served at all; that the customer with an incentive to litigate will be notified of the service of process in time to litigate; and that, under the Government's view of established rules of standing, there will be anything for the customer to litigate.

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[5] Hoping that this Court will ignore Regulation 103.45, the Government attempts to distinguish such cases as *Lankford* v. *Gelston*, 364 F.2d 197 (4th Cir. 1966), by noting three separate times (Gov't AeB 37, 38 and n. 20) that the Regulation was "never utilized," and by denying that it was modified in response to successful litigation by pretending that only the ACLU is appealing (*id.* at 38, n. 20). Regulation 103.45 was restrained and then enjoined by the District Court as part of the domestic reporting requirements from the invalidation of which the Government appeals (App. 42-43, 94-95); its use would have been a contempt.

Even the Government admits that the first assumption is frequently false; it admits that process is frequently unnecessary and will not disclaim an intent to continue soliciting the breach of a contract it does not dispute. All it will say is that the bank is free to say no (Gov't AeB 38 n. 19). The Government could hardly claim more; William S. Lynch, Chief of the Organized Crime and Racketeering Section of the Criminal Division of the Justice Department told a Senate Subcommittee in 1972 that access by the FBI to bank records without process occurs "with some degree of frequency." Hearings before the Subcommittee on Financial Institutions of the Senate Committee on Banking and Currency on Foreign Bank Secrecy (S. 3678), 91st Cong., 2d Sess. (hereafter "1972 Hearings") at 114-15. See also 1972 Hearings at 28, 119.

The second assumption—timely notice to the customer—is even more unrealistic; a representative of the American Bankers Association told the same Subcommittee that he could not name a single instance in which a customer had been notified, *id.* at 233, and representatives of the Justice Department and the Treasury are hard at work in Congress opposing legislation to require such notice on the ground that it would seriously impair criminal investigations. *Id.* at 52-53, 109.

The Government's own argument that it serves process only upon "a bank's own records" (Gov't OB 30-31), coupled with its reading of *Couch* v. *United States,* —— U.S. ——, 34 L. Ed.2d 548 (1973), and *Donaldson* v. *United States,* 400 U.S. 517 (1971) (see Gov't AeB 36 and 45, n.25), would deprive a bank customer of standing to litigate the issues raised here even if he had the opportunity to do so—an

argument that undercuts the third assumption of the Government's notion of prematurity.

Nor would a different reading of *Couch* and *Donaldson,* premised upon the private litigants' theory that a customer *has* litigable Fourth and Fifth Amendment rights in records which but for the Act would not be made or kept, serve to protect those rights. If a criminal defendant moved to suppress a copy of a check sought to be used against him, he would have to prove that, in ordinary business practice and but for the Act, the check would not have been copied at all, or not have been retained for law enforcement access. Since Title I of the Act in effect *abolished* ordinary business practice in that respect by dictating copying and retention practices, and since those practices were in flux due to rapid technological change, that burden of proof would be all but impossible to discharge.

Finally, the rights of customers cannot be protected by reliance upon the bank to contest process. The Security National Bank, unlike some, insists on process and does its best to notify customers of process. It can afford this action but it cannot afford to litigate every summons served upon it; nor has it any interest in doing so. This Court expressly noted the illusory protection afforded those subject to government curiosity supported by process served upon third parties in *Gravel* v. *United States,* 408 U.S. 606, 608 n.1 (1972). See also *United States Servicemen's Fund* v. *Eastland,* No. 71-2034, D.C. Cir., Aug. 30, 1973, Sl. Op. 15.

This action, therefore, is not only not premature but is also the only effective avenue for challenge to the record-keeping requirements of the Act.

As the Government said in its Jurisdictional Statement in its own appeal (p. 9):

> Although the court's injunction is preliminary in form, there are no disputed facts to be resolved, essentially only issues of law are involved, and there is no reason to believe the district court will not simply adhere to the opinion below for the purposes of a final decree.

We agree; the matter is ripe for decision now.

The Government offers only two responses to the merits of the bank customers' Fourth and Fifth Amendment claims: that no search is involved and no compulsion occurs when banks make and keep records they would not otherwise make or keep (Gov't AcB 43-45). But a bank check normally is transferred from maker to payee to the payee's bank to the maker's bank and returned to the payee in a few days or weeks at most; surely the photographing of the instrument is a search of it unless in disclosing its contents to a few the maker has disclosed its contents to the world—and to the Government. Even the Government does not argue that. And the "voluntary" choice, as indicated above, between dealing entirely in (nonreportable) cash and sacrificing privacy by banking is not "voluntary" at all—it is as much compulsion as the threat of confinement.

The Government does not even attempt to defend the recordkeeping requirements of the Act against an attack based upon the rules applicable to criminal investigations; it persists in the conclusory assertion that it is "reasonable" to copy billions of checks and other financial documents in the purported exercise of the Commerce Power. As indicated in Section I above, the Bank Secrecy Act is an exercise of the Police Power and is subject to different and more rigorous standards—standards the Government concededly cannot meet.

IV.

The appellant ACLU faces specific present and future injury from the coerced maintenance of its membership list by its bank—injury intolerable under the First Amendment.

The Government argues that any injury to the First Amendment rights of the appellant ACLU Foundation of Northern California is "subjective" and an inadequate basis for relief (Gov't AeB 45-49). The Government is apparently willing to concede that if a subpoena had issued for the ACLU's bank records, the requisite injury would be sufficiently imminent; but it characterizes anything short of that situation as mere allegations of a "subjective" chill.

But that argument rests upon two of the three erroneous assumptions explored above: that the appellant ACLU's bank records could not be obtained by government in the absence of process, and that the ACLU would be notified of the existence of process in time to litigate its validity.[6] We have indicated above, the Government admits that it engages on a grand scale in inspecting bank records without process, subject only to the reluctance of banks over which it has, as it incessantly claims, "plenary" regulatory power. The Government also quite openly takes advantage of the fact that most banks do not notify customers of process—it vigorously opposes any attempt to require such notification by law, and admits by its silence that such

[6] Apparently in view of *United States Servicemen's Fund, supra*, the Government makes no claim that appellant's bank would have a sufficient adversary interest in contesting process to make litigation by the ACLU unnecessary.

notification rarely occurs. These undisputed facts make hollow the implication that there will be "time enough" to resist process when it issues. At issue here is not "the mere existence, without more, of a governmental investigative and data-gathering activity that is alleged to be broader in scope than is reasonably necessary . . . ", *Laird* v. *Tatum,* 408 U.S. 1, 10 (1972). At issue here is a well-known scheme for the nationwide manufacturing of lists of contributors to and members of controversial membership organizations such as the ACLU—lists that the Government cannot deny are available to it without process, without notice to the organization or its members, and without any opportunity for judicial measurement of any asserted compelling interest in the production of such lists. This, we believe, constitutes the threat of specific future harm, as well as present injury, contemplated by the Court in *Laird, supra.* The ACLU does not seek an "advisory opinion"; on the contrary, it seeks judicial protection from substantial danger to it and its members.

CONCLUSION

The order of the District Court, insofar as it declined to enjoin portions of the Bank Secrecy Act, should be reversed with directions to invalidate the statute in its entirety.

Dated: January 14, 1974.

Respectfully submitted,

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